Escondido, California.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TMY FARMS, INC.,	)	
	)	
Respondent,	)	Case No. 81-CE-32-SD
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	9 ALRB No. 29
	)	
Charging Party.	)	
	)	

DECISION AND ORDER

On May 14, 1982, Administrative Law Judge[1/] (ALJ) Robert L. Burkett issued his attached Decision in this proceeding. Thereafter, TMY Farms, Inc. (Respondent), General Counsel, and the United Farm Workers of America, AFL-CIO (UFW or Union), each timely filed exceptions to the ALJ's Decision and a brief in support thereof.

The Agricultural Labor Relations Board (Board) has considered the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the rulings, findings, and conclusions of the ALJ only to the extent consistent herewith.

The complaint in this case alleged that Respondent violated section 1153(e) and (a)[2/] of the Agricultural Labor Relations Act (Act) by: (1) continuing to deduct dues from its

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[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

[2/] All section references herein are to the California Labor Code unless otherwise specified.

employees' checks during the period from October 4, 1980, to April 1981, but failing to remit the dues to the Union; and (2) failing to comply with the UFW's request for information concerning the union dues which Respondent deducted during that period.

The facts are, for the most part, undisputed, and the parties entered into a stipulation at the hearing, which described the following conduct and correspondence. On January 12, 1978, the UFW and Respondent entered into a collective bargaining agreement which Respondent terminated on October 4, 1980, pursuant to a separate agreement between the parties. Respondent's payroll system was computerized, and the system was set up to make deductions automatically for, among other things, union dues. No one changed the computer program when the collective bargaining agreement was terminated, and thus a deduction continued to be made for dues. The money deducted remained in Respondent's payroll account (a noninterest-bearing account) and was not paid out to the UFW.

On April 21, 1981, UFW representative Barbara Macri sent a letter to Respondent's general manager Mike Horwath requesting that Respondent remit to the UFW dues which were deducted from October 1980, to the date of the letter. On May 1, 1981, Respondent's attorney Laurie Laws wrote Macri a letter stating: "T.M.Y. FARMS will not deduct union dues from any employee's wages." In her May 11 letter in response, Macri reiterated her request for dues already deducted, and requested that Respondent provide the Union with a complete accounting of all dues deductions made from October 1, 1980, to the date of the letter. In addition, Macri asked Respondent to advise the Union what action it intended

to take with respect to any money which might have been deducted in violation of the law.

Laws' reply of June 30 stated that Respondent had terminated the contract on October 4, 1980. Citing Industrial Union of Marine and Shipbuilding Workers v. NLRB (3rd Cir. 1963) 320 F.2d 615 [53 LRRM 2878], Laws noted that union shop and dues checkoff provisions are wholly dependent upon the existence of a contract, and that an employer's discontinuance of the enforcement of union shop and dues checkoff provisions upon expiration of a contract does not violate the National Labor Relations Act (NLRA). Laws stated that Respondent inadvertently had continued to deduct dues from its employees' wages, and that it was in the process of returning to the workers all monies so deducted.

On July 9, 1981, UFW representative Daniel Ybarra sent Laws a letter repeating the Union's request for information, and noting that Respondent had failed to remit dues deductions made during the first three days of October 1980, before Respondent terminated the contract. Ybarra requested that such dues be forwarded to the Union immediately.

On July 15, 1981, Respondent issued the UFW a check in the amount of $235.50 for the dues deducted from October 1 to 3, 1980, and submitted it to the Union together with a list of the employees from whose wages dues had been deducted, including their social security numbers, their hours, and the amount of dues paid.

In an August 24 letter to Board agent Tony Sanchez, Laws enclosed copies of two letters Mike Horwath sent to the workers from whose wages Respondent had deducted dues. In the first

letter, Horwath informed the employees that Respondent had erroneously deducted union dues from their wages from October 4, 1980, through April 1981, even though there was no longer a contract in effect, and that the money would be refunded. With the second letter, Horwath sent checks to the individual workers, refunding the dues that had been deducted. The last sentence of the letter read: "This action by T.M.Y. Farms does not mean that you cannot pay the money to the UFW if you are a member."

On September 8, 1981, Laws sent Macri a list of employees to whom Respondent had returned dues deducted from October to April, including their social security numbers and the amount being returned to each individual. On September 18, Macri wrote back to Laws, indicating that Laws had not satisfied the Union request for a complete accounting of all dues deductions made by Respondent. Macri requested that Respondent provide the Union with the following information: (1) the date, check number and amount of reimbursement issued to each worker, (2) copies of each cancelled check, showing endorsement by the payee, and (3) copies of all dues authorizations in Respondent's possession.

The ALJ found no evidence that Respondent had knowingly or intentionally continued to deduct union dues after it terminated the contract. The ALJ concluded that Respondent had technically violated section 1153(a) of the Act by deducting and retaining dues beyond the termination of the collective bargaining agreement, and had violated section 1153(e) by failing to give the Union the requested full accounting of the dues money it had deducted. The ALJ found, however, that Respondent's actions were not motivated by

anti-union animus, no damage resulted to any party, and the violations were de minimis. The ALJ recommended that Respondent be ordered to pay the UFW interest that would have accrued on the withheld dues at the rate of seven percent, and to provide the UFW with a complete accounting of all dues deductions made from October 1, 1980, to the date of the Union's letter requesting that information.

Both General Counsel and the UFW excepted to the ALJ's conclusions. General Counsel argued that Respondent violated section 1153(a) of the Act by continuing to deduct dues without turning the monies over to the Union, since the workers, by signing dues authorizations, had agreed that a certain percentage of their wages would be withheld and forwarded to the Union to support their bargaining representative. General Counsel also argued that Respondent's withholding of the dues, and its failure to forward the dues to the Union, interfered with the employees' protected concerted activity. The UFW asserted that Respondent also violated section 1153(e) of the Act by failing to remit the dues to the Union and by bypassing the Union and returning the dues directly to the employees. Both General Counsel and the UFW argued that Respondent's failure to provide the requested information was not de minimis, since the information the Union requested was relevant to its function as the exclusive collective bargaining representative of Respondent's agricultural employees.

Respondent excepted to the ALJ's conclusion that it violated the Act, arguing that it had no duty to deduct the dues or to remit them to the Union, nor did it have a duty to submit

information to the Union regarding any dues collected after it terminated the contract on October 4, 1980.

We find that Respondent did not violate the Act by continuing to deduct dues from its employees' wages after termination of the contract, nor by its action in refunding the monies to its employees rather than remitting the monies to the Union. The National Labor Relations Board (NLRB) has held that the union security and dues checkoff provisions of a contract do not survive the expiration of the contract. (Industrial Union of Marine and Shipbuilding Workers v. NLRB, supra, 320 F.2d 615.) Therefore, an employer does not have a statutory duty to continue to deduct dues and remit them to the union after the contract has expired.[3/] (Peerless Roofing Co., Ltd. (1980) 247 NLRB 500 [103 LRRM 1173].) In Peerless, the employer, after expiration of the contract, refused to remit dues to the union; however, the record did not indicate whether the employer had actually deducted dues from the employees' wages. The NLRB affirmed, without comment, the ALJ's conclusion that, "If Respondent did deduct dues from the wages of its employees, those employees are entitled to have that money returned to them by Respondent." (Id., at pp. 500, 506.) In another NLRB case, the national board affirmed the decision of the ALJ, who

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[3/] Our dissenting colleagues object that we ignore the fact that the employees' authorization cards continued to be valid after expiration of the contract. (Dissent, p. 14.) However, although the authorization cards are still valid in the sense that the employer may continue to deduct dues pursuant to the cards, the employer does not commit an unfair labor practice by not continuing to deduct dues after expiration of the contract, even if the authorization cards are unrevoked. (Industrial Union of Marine and Shipbuilding Workers v. NLRB, supra, 320 F.2d 615.)

had remarked, in dicta, that an employer who continues to deduct dues after expiration of a contract might commit an unfair labor practice by failing to turn the dues over to the union if such dues are voluntarily paid by the employees, since that would seem to be discouraging membership in the union. (Lowell Corrugated Container Corp. (1969) 177 NLRB 169 [72 LRRM 1419].)

We find that there is no applicable NLRA precedent indicating whether an employer who continues to deduct dues after expiration of a contract has a duty to remit those dues to the union rather than to the employees.[4/] Even if we were to follow the ALJ's dicta in Lowell, we would find no violation in the instant case because there is no record evidence that Respondent's actions regarding dues deduction interfered with or tended to interfere with its employees' section 1152 rights. (Radio Officers' Union of Commercial Telegraphers Union, AFL v. NLRB (1954) 347 U.S.17 [33 LRRM 2417].)

The dissent appears to favor application of a per se rule that an employer's failure to forward deducted dues to the Union necessarily tends to interfere with the employees' right to engage in union activity. (Dissent, pp. 14-15.) We find no reason

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[4/] Our dissenting colleagues' citations to Shen-Mar Food Products, Inc. v. NLRB (1976) 221 NLRB 1329 [91 LRRM 1122] (Dissent, pp. 13, 15) are inappropriate. In Shen-Mar there was an existing contract still in effect which contained a valid dues deduction provision. Shen-Mar deals with an entirely different factual situation from the one at hand. In Shen-Mar a contract existed, and the employer failed to deduct and remit dues of employees following their resignation from the union and their untimely cancellation of voluntary checkoff authorizations. Shen-Mar does not constitute precedent for the instant case, in which Respondent no longer had a duty to deduct dues because the contract had expired. In fact, there is no applicable NLRA precedent for the instant situation.

to relieve the General Counsel of its burden of proving a prima facie case. As the ALJ stated, "While the argument has been made that the dues check-off error might undermine the union's credibility and its ability to organize and represent the workers, there was no showing that this was in fact the case." (ALJ Decision, p. 5.) It is true that the General Counsel need not show that Respondent intended to interfere with its employees' section 1152 rights if the employer's conduct inherently tended to interfere with such rights. (Radio Officers' Union of Commercial Telegraphers Union, AFL v. NLRB, supra, 347 U.S. at 45.) However, we believe that interference with section 1152 rights was not a natural consequence of Respondent's action in returning inadvertently deducted dues to employees rather than to the Union, especially in view of Respondent's letter to employees explaining that they could pay the money to the Union.

The dissent fails to cite any record evidence showing that Respondent's actions either interfered or tended to interfere with employees' section 1152 rights. The dissent speculates that employees' good standing might have been jeopardized because the employees had not paid their dues for seven months. However, there is no record evidence to support that speculation, and in fact the evidence indicates that the Union itself failed to notice until April 21, 1981, that Respondent had not remitted dues since October 1, 1980 (a period of 27 weeks). The dissent also speculates that employees could have had to pay dues twice, but it cites no evidence to show that anyone in fact paid dues twice, or that Respondent's action of returning the dues money to the employees

rather than remitting it to the Union made double payment likely.

For the above reasons, we find no authority to support the General Counsel's and the UFW's contention that Respondent violated section 1153(a) of the Act, and we shall dismiss that allegation of the complaint.

We also conclude that Respondent did not violate section 1153(e) of the Act by failing to furnish the detailed information which the UFW requested. An employer has the duty to furnish the certified bargaining representative of its employees with information requested by the Union which is relevant to the performance of its duties to negotiate a collective bargaining agreement. (NLRB v. Associated General Contractors (9th Cir. 1980) 633 F.2d 766 [105 LRRM 2912], cert. den. (1981) 452 U.S. 915 [101 S.Ct. 3049]; Detroit Edison Co. v. NLRB (1979) 440 U.S. 301 [99 S.Ct. 1123].) While Respondent did not furnish the Union with the requested copies of cancelled checks issued to employees or copies of all dues authorizations in its possession, it did submit a list of employees from whose wages dues had been deducted, including their social security numbers, their hours, and the amount of dues paid, as well as a list of employees to whom Respondent had returned deducted dues, including their social security numbers and the amount returned to each individual. Thus, we find that Respondent did supply the UFW with the information relevant to a determination of which employees had dues deducted from their checks after expiration of the contract, and the amounts that had been so deducted and refunded. We find no violation of the Act in Respondent's failure to submit another form of the information

after it had already furnished the requested information to the UFW.

In arguing that the Union was entitled to the specific form of the information it requested (that is, the cancelled checks), the dissent suggests that any refund check not cashed by an employee would be a windfall to Respondent and that Respondent is not entitled to keep any of the deducted money. We know of no common law or statutory obligation of Respondent to ensure that the refund checks it sent to employees were actually cashed. Furthermore, Respondent could not reasonably be held to have "kept" money of employees who failed to cash their refund checks.

The dissenters appear to believe that Respondent's dues deduction after expiration of the contract was intentional, and argue that Respondent's claim that the deduction was inadvertent "is incredible." (Dissent, p. 16.) However, the dissent fails to note that the ALJ specifically found that the dues deduction was inadvertent. (ALJ Decision, p. 4.) The dissent cites no record evidence to support overruling the ALJ's finding.

The dissent's final conclusion that, "If a valid (unrevoked) dues check-off authorization exists the employer must deduct the dues from the employee's wages and forward it to the union ..." (Dissent, p. 19) is an inaccurate statement of the law. On the contrary, as our dissenting colleagues recognize earlier in their opinion, the employer has no duty after expiration of the contract to deduct dues and forward them to the Union, in spite of the existence of a "valid" (that is, unrevoked) dues authorization. (Industrial Union of Marine and Shipbuilding Workers v. NLRB, supra,

320 F.2d 615.)

For the above reasons, we shall dismiss the complaint in this matter in its entirety.

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: May 25, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

PATRICK W. HENNING, Member

MEMBER WALDIE and MEMBER CARRILLO, Dissenting:

We agree with the majority that Respondent did not violate the Agricultural Labor Relations Act (Act) by continuing to deduct dues from its employees after the termination of the contract. (Lowell Corrugated Container Corp. (1969) 177 NLRB 169 [72 LRRM 1419].) Nor was it unlawful for Respondent to discontinue deducting union dues from its employees' wages on May 1, 1981, after the collective bargaining agreement had been terminated, since the union security provisions of the contract do not survive the expiration of the contract. (Industrial Union of Marine and Shipbuilding Workers v. NLRB (3rd Cir. 1963) 320 F.2d 615 [53 LRRM 2881].) National Labor Relations Board (NLRB) precedent establishes two ways a dues check-off provision can be terminated after a contract has expired: by the employer refusing to deduct

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dues from its employees' wages,[1] or by the employee revoking his or her dues check-off authorization in a timely manner and in accordance with established procedures.[2] Neither method was utilized in this case during the period from October 4, 1980 through May 1, 1981.

We do not agree with the majority's conclusion that Respondent did not violate section 1153(a) because there was no showing that Respondent's actions either interferred with or tended to interfere with its employees' section 1152 rights. The natural consequences of Respondent's failure/refusal to forward deducted dues money to the Union interfere with the right of its employees to support their collective bargaining

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[1] The NLRB has held that, unlike other terms and conditions of employment, which the employer must continue to effect after the expiration of a contract, the union security and dues checkoff provisions are dependent upon the existence of a contract that meets the requirements of section 8(a)(3) of the National Labor Relations Act (NLRA), and they do not survive the expiration of a contract. (Trico Products Corporation (1978) 238 NLRB 1306 [99 LRRM 1473], Bethlehem Steel Company (Shipbuilding Division) (1961) 133 NLRB 1347 [49 LRRM 1173]; Peerless Roofing Co. (1980) 247 NLRB 500 [103 LRRM 1173].) Therefore, an employer may lawfully discontinue deduction of union dues after a contract expires. (Industrial Union of Marine and Shipbuilding Workers v. NLRB, supra, 320 F.2d 615.)

[2] See, for example, Shen-Mar Food Products, Inc. (1976) 221 NLRB 1329 [91 LRRM 1122], enforced sub nom Shen-Mar Food Products, Inc. v. NLRB (4th Cir. 1977) 557 F.2d 396 [95 LRRM 2721], where the national board found that the employer violated the NLRA by failing to deduct and remit the dues of several employees following their resignation from the union and their untimely cancellation of voluntary dues-checkoff authorizations. The board found that such failure "by necessity interferes in the relationship of employees and their representative and constitutes an unlawful infringement upon the section 7 rights of employees protected by law from employer interference." (See also NLRB v. Cameron Iron Works, Inc. (5th Cir. 1979) 591 F.2d 1 [100 LRRM 3005].)

representative. An actual showing of interference is not required.

To establish a prima facie case for a violation of section 1153(a), General Counsel need not prove the actual effect on employees or the employer's motive in engaging in the unlawful conduct. General Counsel need prove only that the employer engaged in conduct which reasonably tends to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Act. (Lawrence Scarrone (1981) 7 ALRB No. 13; Kawano, Inc. (1981) 7 ALRB No. 16; Nish Noroian Farms (1982) 8 ALRB No. 25.)

The majority ignores the fact that the employees' authorization cards continued to be valid after the expiration of the contract because neither the employees nor Respondent had taken steps to revoke them. In fact Respondent continued to honor the employees' desire to have their union dues deducted from their wages.[3/] The employees' request that union dues be deducted from their wages and forwarded to the union is protected

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[3/] In Trico Products Corporation (1978) 238 NLRB 1306 [99 LRRM 1473], the national board noted that dues checkoff authorizations are contracts between the employer and employee. An employer cannot choose to honor only part of a contract for it shall then be in breach of the contract for those parts it does not honor. I do not find a violation because of the breach of the contract but it is the effect the breach has on the rights of the employees which constitutes a violation of section 1153(a). Just as we find a violation of section 1153(e) when an employer refuses or fails to honor provisions of a collective bargaining agreement, we do so not because of the breach itself but because of the effect such conduct has on the collective bargaining representative and the employees.

union and concerted activity.[4/] Respondent's failure to forward the money deducted from its employees' wages for union dues tends to interfere with the employees' rights under the Act i.e., it tends to interfere with their right to engage in union activity by giving financial support to the union.

Employees demonstrate support by dues cards. The Union did not receive union dues for a period of seven months from Respondent's employees. The Union could not collect the dues from its members because Respondent had already deducted the dues but failed to forward the money to the UFW. This failure by Respondent to forward the money, whether intentional, negligent, or inadvertent, tends to interfere with the relationship between its employees and their collective bargaining representative. (See Shen-Mar Food Products, Inc., supra, 221 NLRB 1329.)

Under the majority's analysis, there will be no violation of the Act, even if a respondent intentionally and knowingly deducted the union dues, so long as the respondent

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[4/] In Shen-Mar Food Products, Inc. (1976) 221 NLRB 1329 [91 LRRM 1122] enforced 557 F.2d 396 [95 LRRM 2721], the board found that the employer violated the National Labor Relations Act (NLRA) by failing to deduct and remit the dues of several employees following their resignation from the union and their untimely cancellation of voluntary check-off authorizations. The board found that such failure "by necessity interferes in the relationship of employees and their representative and constitutes an unlawful infringement upon the section 7 rights of employees protected by law from employer interference." Because there was an existing contract, the board also found that the employer's ceasing to deduct and remit dues, in derogation of the existing contract, constituted a unilateral change in the terms and conditions of its workers' employment, and thus violated section 8(a)(5).

eventually returns the money to its employees at some unspecified future time.[5/] The Union would have to show that Respondent's action actually interfered with employees' section 1152 rights. The tendency to interfere with the relationship between the employees and union is inescapable and a natural consequence of Respondent's untimely attempt to refuse to honor valid authorization cards.

Respondent's claim that it inadvertently failed to inform the bank that union dues should no longer be deducted even though it received weekly and monthly reports from its bank is incredible. This alleged inadvertence lasted seven months. Even after the Union notified Respondent that it had not forwarded the union dues, Respondent waited three months before forwarding the dues that had been deducted while the contract was still in effect. Respondent waited even longer to return the money to its employees. The effect of Respondent's alleged inadvertence was to deprive the employees of providing monetary support to the Union for almost a year. However, Respondent's alleged inadvertence is of no legal significance because the injury to employees is the same whether such action was inadvertent, negligent or intentional.

In addition to placing a financial burden upon the Union, Respondent placed in jeopardy the "good standing" of its

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[5/] The majority's recitation of Peerless Roofing Co., Ltd. (1980) 247 NLRB 500 [103 LRRM 1173] fails to note that the ALJ's footnote conclusion that "If Respondent did deduct dues from the wages of its employees, those employees are entitled to have that money returned to them by Respondent." is also dicta.

employees with the Union since those employees had not paid their union dues for those seven months. The employees could have been forced to pay the dues under threat of loss of good standing and/or to pay the arrears out of their own pockets, in effect paying dues twice, once to Respondent through its dues deduction and again to its chosen collective bargaining representative because of Respondent's failure/refusal to forward the deducted dues.[6/] The effect of having to pay dues twice not only tends to injure the employees but tends to deprive the employees of adequate representation by the Union which needs the dues money in order to adequately represent the interests of its members.

The majority chides us for allegedly speculating on the effect of Respondent's action on the employees' good standing for failing to pay their dues and of possibly having to pay dues twice. True, there is no record evidence to support these claims, but we are merely pointing out the many ways in which Respondent's failure to forward the dues money to the Union tends to interfere with the protected relationship between the employees and their collective bargaining representative. Actual interference need not be proved.

The payment of union dues by employees to their collective bargaining representative is union activity protected by the Act. The employer is not required to assist employees

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[6/] It can be argued that once the employer deducts the dues from an employees' wages, the union is unable to collect the dues itself because they were already paid over to the employer pursuant to the dues checkoff authorization. (See Independent Stave Company (1980) 248 NLRB 219 [103 LRRM 1480].)

in their union activity, but once it agrees to assist in the collection of union dues it may not thereafter interfere with the employees' right to support the union by deducting the dues money and thereafter refusing or failing to forward the money to the union. Such interference violates section 1153(a).

We also disagree with the majority that Respondent did not violate section 1153(e) of the Act by failing to furnish information the UFW requested. We would find a violation. The information that Respondent provided to the UFW does not adequately tell the UFW if the employees in fact received the money that had been deducted. The employees did not know they would be receiving this money.

Because of the migratory nature of the agricultural labor force, it is reasonable to assume that some of the agricultural employees who worked for Respondent and had dues deducted from their wages during the relevant time period would not be working for Respondent at the time the dues money was refunded. Thus, the money would have to be forwarded to them through the mail or by some other means.

The UFW requested a complete accounting of all the dues deductions Respondent made after October 1, 1980, and later requested information regarding any money returned to the employees. The UFW also requested information concerning the checks issued to the workers when their dues were returned, copies of the cancelled checks, and copies of all check-off authorizations in Respondent's possession. The only information that Respondent provided the Union was a list of the employees

from whose wages dues had been deducted, and to whom the dues had been returned.

As the employees' collective bargaining representative, and as the intended recipient of the union dues withheld from the workers' wages, the Union had the right to the information it requested in order to be able to carry out its function as the exclusive representative of Respondent's workers concerning their wages and terms and conditions of employment. A list of employees who were sent refunds (in the form of a check) is insufficient to show that each employee actually received and cashed the check. Any refund check not cashed by an employee results in a windfall for Respondent since the money remains in its bank account. Respondent is not entitled to keep any of this money which was deducted pursuant to the requests of its employees. The money was given to the Respondent by the employees with the intent that that money be given to the UFW. Any money that Respondent keeps is money that does not belong to it and knowingly keeping that money may constitute an independent violation. Therefore, we would find that Respondent violated section 1153(e) of the Act by failing to furnish information requested by the UFW.

Any failure to honor a valid dues check-off authorization, even if inadvertent, is contrary to the purposes and policies of the Act. If a valid (unrevoked) dues check-off authorization exists, the employer must deduct the dues from the employee's wages and forward it to the union. Otherwise it interferes with employees' union activity and we would find

a violation for any failure to totally honor a valid dues check-off authorization.

Dated: May 25, 1983

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

CASE SUMMARY

TMY Farms, Inc.
(UFW)

9 ALRB No. 29
Case No. 81-CE-32-SD

ALJ DECISION

The ALJ concluded that Respondent had technically violated section 1153(a) of the Agricultural Labor Relations Act (Act) by inadvertently deducting and retaining union dues beyond the termination of the collective bargaining agreement, and had violated section 1153(e) of the Act by failing to give the Union a requested full accounting of the deducted dues money. The ALJ found that Respondent's actions were not motivated by anti-union animus, no damage resulted to any party, and the violations were de minimis. He recommended that Respondent be ordered to pay the Union interest that would have accrued on the withheld dues, and to provide the Union with a complete accounting of all dues deductions made during the relevant period.

BOARD DECISION

The Board found that Respondent did not violate the Act by continuing to deduct dues from its employees' wages after termination of the contract, nor by its action in refunding the monies to its employees rather than remitting the monies to the Union, because there was no record evidence that Respondent's actions interfered with or tended to interfere with its employees' rights under section 1152 of the Act. The Board also concluded that Respondent did not violate section 1153(e) of the Act by failing to furnish information the Union requested about the dues deduction. Although Respondent did not supply the information in the form requested by the Union, the Board found that Respondent did furnish the Union with the information relevant to a determination of which employees had dues deducted from their paychecks after expiration of the contract, and the amounts that had been so deducted and refunded.

DISSENT

Members Waldie and Carrillo would find that Respondent violated section 1153(a) of the Act by failing to forward dues money deducted from employees' wages. The natural consequences of Respondent's failure/refusal to forward the deducted dues money to the Union interfere with the right of its employees to support their collective bargaining representative. Respondent's action tends to interfere with its employees' right to engage in union activity; i.e., giving financial support to the Union. Members Waldie and Carrillo would also find that Respondent violated section 1153(e) of the Act when it failed to furnish the information the UFW requested. As the employees' collective bargaining representative, and as the intended recipient of the Union dues withheld from the employees' wages, the Union had the right to the information requested in order to be able to carry out its function as the exclusive bargaining representative with regard to wages, hours, and terms and conditions of employment.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of:	
T.M.Y. FARMS,	
Respondent	Case Number 81-CE32-SD
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO	
Charging Party	

DECISION

1 STATEMENT OF THE CASE

Robert L. Burkett, Administrative Law Officer. This case was heard before me on November 24, 1981, in San Diego, California; all parties were represented by counsel.

This case involves a charge filed on June 15, 1981, by the United Farm Workers of America, AFL-CIO (UFW). The General Counsel maintains that Respondent violated sections 1153(a) and (3) of the Agricultural Labor Relations Act (Act) both when 1) it knowingly continued to extract union dues from its employees checks, but failed to remit said dues to the UFW during the period of October 4, 1980 to April, 1981, and 2) when it failed to turn over information requested by the UFW concerning the union dues deducted during the same period.

FACTS

A) Jurisdiction

1. The Respondent is and was at all times mentioned an agricultural employer within the meaning of section 1140.4(c) of the Act.

2. The Union is and was at all times mentioned a labor organization within the meaning of section 1140.4(f) of the Act. 3/

B) Unfair Labor Practices Alleged

On or about January 12, 1978, the United Farm Workers of America, hereinafter referred to as the "UFW", and T.M.Y. Farms entered into a collective bargaining agreement. That collective bargaining agreement was in full force and effect until October 4, 1980, when it was terminated by T.M.Y. Farms in writing pursuant to separate agreement between T.M.Y Farms and the U.F.W.

The payroll system at T.M.Y. Farms was totally computerized, and the program was set up to make deductions for, among other things, dues, medical plan, the pension plan, and the Martin Luther King Fund. After the collective bargaining was terminated no one changed the computer program; thus, a deduction continued to be made for dues. The monies just remained in the payroll account and were not paid to the respective employees or to the U.F.W. This payroll account does not bear any interest or income. This continued until on or about April 21, 1981, when Barbara Macri, a representative of the U.F.W. sent the general manager of T.M.Y. Farms a letter requesting that T.M.Y. Farms remit dues for the individuals that it employed. T.M.Y. Farms changed the computer program to omit the dues deduction, and by and through its attorney, Laurie Laws, informed the U.F.W. that T.M.Y. Farms would not deduct any more union dues from the employees' wages. T.M.Y. informed the U.F.W. that it was returning all monies to the workers that it had deducted.

On July 9, 1981, David Ybarra, a representative of the U.F.W., pointed out that T.M.Y. Farms had not remitted the dues for the first three (3) days of October, and on July 15,1980 T.M.Y. Farms drew a check for the dues for 1,2, and October 3, 1980, and submitted it to the U.F.W. together with a list of the individual employees, their social security numbers, their hours and the amount of dues paid.

On September 8, 1981, T.M.Y. Farms, by and through its attorney, Laurie Laws, sent the U.F.W. a list of the individuals from whom dues were deducted, their social security numbers, and the amount being returned to each individual.

On May 11, 1981, Barbara Macri of the UFW sent a letter to Laurie Laws, T.M.Y. Farms Counsel that the UFW formally requested that T.M.Y. provide them with a complete accounting of all dues deductions made since October 1, 1980, to the present. The UFW further requested that the company advise them as to what action the company intended to take with respect to any monies which may have been deducted in violation of law. Again, on July 9, 1981, David Ybarra of the UFW requested information regarding dues deducted after October 1, 1980.

The single factual dispute in this case is whether or not the Respondent knowingly and advertently deducted union dues from its Agricultural Employees and retained said dues from on or about October 4, 1980 through April 1981.

FINDINGS

There is nothing in the record to indicate that T.M.Y. Farms knowingly, intentionally, and advertently, continued to extract union dues from its employees' checks subsequent to the termination of the collective bargaining instrument. Additionally, the record is silent as to whether or not it was inadvertent however, I find that the charging party failed to establish intent on the part of T.M.Y. Farms.

Immediately upon being notified that it was continuing to deduct the dues money, T.M.Y. turned all collected dues monies over to the respective employees. It would seem on the surface that T.M.Y. was guilty of a failure to properly program its computer, rather than an attempt to subvert union activity. When T.M.Y. was notified of the wrongful deductions the computer program was changed to omit dues deductions.

No evidence was introduced of any anti-union animus, nor was there any indication that the union or the employees suffered any harm as a result of the wrongful dues checkoffs, other than the employees being deprived of those monies for a period of six (6) months. Without evidence as to respondent's motive or potential gain by his action, I am unable to find that T.M.Y. Farms acted intentionally and knowingly during the period it wrongfully checked off the union dues. This is a novel case in that at its heart, there is no real labor-management controversy. In addition, there has been no demonstration of any damages suffered by any of the parties.

CONCLUSIONS OF LAW

Introduction

It is undisputed that Respondent did wrongfully retain dues beyond the termination of the collective bargaining instrument. In doing so, T.M.Y. is in technical violation of 1153(a). The company extracted money that the employers believed was going to support the employers' bargaining representative. The law is well settled concerning the duty of an employer to disclose information to the certified bargaining representative. Although in the specific instance the bargaining agreement had been terminated, the request for information related to a specific provision within the terminated collective bargaining instrument; a provision that was still being undertaken by the company 6 months after the termination of the instrument. The U.S. Supreme Ct. held in NLRB v. ACME Industrial Company, 385 U.S. 432, 435-36, 87 S. CT. 565, 567-68, 17L.Ed. 2d 495 (1967),, that the Board "Acted under the probability that the desired information was relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities administering the collective bargaining agreement."

Employer further violates the Act when it fails and refuses to furnish the certified bargaining representative of its employees with information requested by the union which is relevant to the performance of its duties to negotiate a collective bargaining agreement. NLRB vs. Associated General Contractor, 633 F,2d. 766 105 LRRM 2912 (oth Cir. 1980); Detroit Edison Co. v. NLRB, 440 U.S. 301, 303, 99 S.Ct. 1123, 1125, 59 L. Ed. 2d 333 (1979).

In the present case T.M.Y. while it did provide much of the information requested by the UFW, failed to give a full and complete accounting of those monies it had deducted from the wages of its employers. Clearly these deductions of union dues from employees wages falls within the mandatory subjects of bargaining that encompasses "wages and related conditions". And also encompasses the union's duty to administer the previously terminated contract. As such, I find T.M.Y. Farms to have violated Sections 1153(a) and 1153(e) of the Act by failing to turn over the information requested by the UFW concerning the deduction of dues from the period of October 4, 1980 to April 1, 1981.

While I have found that T.M.Y. Farms has the duty to provide the UFW with an accounting of the wrongful dues checkoffs, it should again be noted that this responsibility arose out of an inadvertent act on the part of respondent ; an act that on its face and in light of the evidence presented rose not out of anti-union animus nor of any potential self-gain, but merely out of a computer program error. Even so I find that T.M.Y. wrongfully withheld the information requested by the UFW in

relation to the dues checkoffs.

While I have found that the employer T.M.Y. was in violation of the Act, I also find that the violations are diminimus violations, done without anti-unionanimus , and resulting in no damages to any party. While the argument has been made that the dues check-off error might undermind the union's credibility and its ability to organize and represent the workers, there was no showing that this was in fact the case. Additionally, while the respondent did not specifically comply with the request for full accounting, Respondent did make an effort to supply most of the materials requested.

The UFW has asked for the Respondent to pay in full all those dues checked off wrongfully during the period in question. Such a payment would be unjust enrichment. The union had no rights to these monies and their existence in a fund in T.M.Y. Farms was the result of T.M.Y.'s carelessness not the result of any anti-union activity. Additionally, T.M.Y. turned all these monies over to the employers as soon as it received notification of its error from the union. Therefore, T.M.Y. would be forced to make a double payment- A penalty that is far beyond the scope of Respondent's error.

Respondent is responsible for its acts. The money was wrongfully withheld for a period of approximately 6 months. During this time no interest was drawn nor received by either the company, the union or the employees. The only finding of actual harm in the case at hand was that the company's wrongful withholding of the dues checkoff for six (6) months resulted in the loss of six (6) months interest accrual.

Let me reiterate once again that while I have found technical violations of the act the evidence and testimony do not reveal there to be a significant underlying labor-management dispute. In drafting my order I have looked to section 1 of the Act whereby it states..."in enacting this legislation the People of the State of California seek to insure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations."

I do not believe that justice would be served nor that it would be promoting agricultural stability and peace by issuing a strongly worded and punitive order in this matter. In a case such as this where there is really no underlying-labor-management dispute the traditional remedies would be counter-productive.

ORDER

By authority of Labor Code Section 1160.3 the Agricultural Labor Relations Board hereby orders that Respondent, T.M.Y. Farms, its officers, agents, successors, and assigns, shall:

1. Pay to the UFW an amount equal to the interest that would have accrued on the monies wrongfully withheld by Respondent. This amount will be determined by using an interest rate of 7 per cent and is applicable only to that time during which the monies were withheld.

2. Supply the UFW with a complete accounting of all dues deductions made from October 1, 1980 to the present, pursuant to the May 11, 1981 letter written by Barbara Macri.

3. Notify the Regional Director in writing within 30 days as to the date of issuance of this Order what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him-her periodically thereafter in writing what further steps have been taken in compliance with this order.

DATED: May 14, 1982

ROBERT L. BURKETT
Administrative Law Officer